30th Congress, 1st Session. [SENATE.] Rep. Com., No. 153.

IN SENATE OF THE UNITED STATES.

May 15, 1848.

Submitted, and ordered to be printed.

Mr. Westcott made the following

REPORT:

[To accompany bill S. No. 264.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Bancroft Woodcock, report:

That the petitioner prays for a special law, securing and extending a patent issued to him, on the 26th day of January, 1832, for "*certain improvements in the self-sharpening plough.*" He has filed, with his petition, a copy of the specifications accompanying the said patent, duly certified.

He made further improvements in said plough, for which, on the 23d day of November, 1836, he obtained a patent, the original of which is filed with the petition.

He made further improvements, for which, on the 14th of June, 1837, he obtained a patent, a certified copy of the specification to which is filed; and which patent was cancelled, on account of a defective specification, on the 23d of November, 1837, and a new patent issued, the original of which is also on file.

He made further improvements, for which, on the 31st of January, 1845, he obtained another patent, the original of which is likewise filed.

The first patent expired January, 1846, and he asks for a renewal and extension of it for *fourteen* years more.

It seems that in November, 1845, he applied to the Commissioner of Patents, by petition, for an extension of his patent by the "*board*," under the 18th section of the act of 4th July, 1836, and his application was refused. A copy of his petition to the commissioner; of the report of the "examiner," dated January 6, 1846, upon that petition; a copy of his account of receipts and expenditures, sworn to November 22, 1845, presented with said petition; a copy of the affidavit of William Seibert, and a copy of the affidavit of John Armstrong, assignees of his patent for certain specified districts in the United States, also filed with said petition, all duly

certified, and now presented, with his petition, to the Senate. A copy of the decision of the "board," refusing to extend the patent, is also presented, duly certified.

There were also presented the following papers:

1. Letter from Thomas P. Jones to petitioner, dated Washington, February 26, respecting defects in the specifiations to his patent of 1832, sought to be renewed and extended.

2. Letter from S. Wakefield to Rev. Mr. Slicer, dated February 23, 1848, recommending the plough; and Mr. Slicer's certificate as to Mr. Wakefield's standing.

3. Letter from Hon. T. J. Henley to petitioner, dated June 16, 1847, recommending his plough.

4. Letter from George W. Thompson to Hon. W. S. Brown, dated March, 1846, recommending the plough.

5. Letter of Hon. Henry R. Foster to chairman of the Committee on Patents of Senate, dated February 8, 1848, recommending passage of law prayed for.

6. Certificate of Hon. T. J. Henley as to ability of plough, &c., dated March 11, 1848.

7. Sundry letters of introduction and recommendation given to petitioner, addressed at different times, by different persons, to different members of Congress, and filed by petitioner.

8. Sundry letters and notes to the chairman of Committee on Patents, in 1848, by petitioner.

Petitioner has also filed a copy of the drawings of his plough, filed in 1832 at the patent office, duly verified.

There has also been procured from the patent office, and filed with the papers, a copy of the specifications of *John Deats's* invention, patented 28th December, referred to by the "examiner," in his report of January 6, 1846, above mentioned.

The petitioner has also filed a statement of an account similar to that presented to the Commissioner of Patents, in November, 1845, of his profits and losses, which have accrued to him in reference to his said invention. This account is sworn to, March 29, 1848.

The committee would observe that this case has been twice before the Senate, at previous sessions.

On the 25th February, 1846, the petition was first presented, and March 3, 1846, having been referred, it was reported upon favorably by bill S. 105, which was not finally acted on at that session. (See journals.)

On the 14th December, 1846, it was again presented, and, February 17, 1847, a similar bill was again reported, S. 162, which also was not acted upon. (See journal of Senate.)

It is urged upon the committee that the reporting of bills *twice* in petitioner's favor, by former committees, upon the evidence adduced to *them*, has induced him to believe that his testimony would be entirely satisfactory, and that he has not, therefore, sought to procure new and additional evidence, till apprised of the policy of so doing by the report of this committee in *Herrick Aikens's* case, suggesting rules to be complied with by petitioners to Congress

for the extension of patents; and he contends, therefore, that the rules prescribed by that report should not be rigidly applied to his case. The committee yield no inconsiderable weight to these arguments, and they regard the circumstances of this case, before stated, as entitling it to the most liberal consideration.

This is the first case which has been under consideration, *at this session*, in which it is sought to *reverse* the decision of the "board of extensions" by a special act, where the refusal to extend was upon the *merits of the case*, as presented to and considered by the board; if the refusal of the board was, in fact, upon the merits. But on this point, it may be observed, that the board give no reason for their decision, except the general statement that the patent "*ought not to be extended*," contained in the order of refusal; and it does not certainly appear that such refusal was upon its merits.

From the report of the examiner to the board, it may be presumed it was on the ground of want of *novelty* in the thing patented. The committee allowed Mr. Woodcock to submit models and specimens of his plough for their examination. They examined the drawings of his plough as patented, filed with his papers, and compared them with the plough, and they also compared them with the specifications of John Deats's plough, patented in December, 1831, referred to by the "examiner" in his report, and the committee are satisfied that Mr. Woodcock's plough is essentially variant from that of Mr. Deats. Indeed the examiner states there is "*some novelty*" in a portion of Mr. Woodcock's plough, or rather in attaching certain parts of it, and in which part also it is variant from the invention of Mr. Deats. If the law regulating the "board of extension," or if any rule of legislation controlling Congress, required a decision as to what *degree* of novelty must be shown to entitle a thing to be called "*new*," or be classed as an "*invention*," in order to be patented, such determination would be a difficult undertaking. It seems to the committee that no *degrees* of novelty are recognized by the patent laws, and that the invention of such degree is not called for by any dictate of wise policy. In fact, to speak of an implement or article being *new*, in a greater or less *degree*, is a solecism in terms. It may be partly new, partly an invention, and partly not. But each part is *new*, in an invention, or *it is not*. The terms "*new*," and "*novelty*," and "*invention*" are not with reference to a distinct substantive thing, susceptible of qualification. If, however, a decision as to the degrees of novelty is required, it must depend on the mere opinion, the undefined and undefinable discretion, or rather the fancy, of those who make such decision; for there are not, and cannot be, any settled and established rules to guide them.

It is not, therefore, any assumption of superior intelligence as to this case, or superior wisdom on such subjects, on the part of the committee, over the "board of extension," for the committee to differ from it on such question, and to say that, in their opinion, after full consideration of the case, as it was presented to the board, if the refusal of the board to extend the patent was on the ground of *want of novelty* in the invention, it was a somewhat rigorous exercise of the discretion with which the law invested it. On this

ground the committee come to a different conclusion from the board, as to the propriety of extending this patent. It is regarded by the committee as sufficient that it is conceded there is "*some novelty.*" It is *novel*, it is an "*invention*," and, in that respect, all difficulty as to its extension is obviated.

Of the *utility* and *value* of Mr. Woodcock's invention, the testimony adduced has satisfied this committee. Upon this point, proofs have been laid before the committee, which were not before the board of extension. It is in the papers above stated, as not before the board. It is true, the thing patented is an implement which, if none of its peculiar construction existed, would not, perhaps, materially impede the progress of agriculture in the United States. It is not in the estimation of any of this committee the *ne plus ultra* of the improvements in this kind of implements of husbandry; it will not affect any great revolution in farming; there are hundreds of different kinds of ploughs, of various construction, some patented and some not patented, which may serve farmers just as well as this; but the committee are still satisfied it is a useful invention. In some respects it has its advantages over all others; in other respects, it is not equal, in its qualities, to others. The plough is an implement the use of which is not apt to be changed or regulated by rules of mere fashion, without reference to its utility. Each kind of plough has its advantages of convenience, cheapness, not being liable to get out of order, or some other quality peculiarly adapted to the mode and plan of its use, and to those who use it. In some sections, and by some classes of farmers, who have their own mode of culture, one sort of plough is preferred; while elsewhere that is discarded for a different favorite. That any portion of the community do or may prefer this of Mr. Woodcock's, is sufficient. It is enough to give it the character of *utility*. It is considered that *susceptibility* of being beneficially used constitutes *usefulness*, within the meaning and policy of the patent laws; and it is not necessary that such usefulness should be of a superior character, or that the article should be universally useful among all classes, and in all sections of the country; and, if a plough, as to all soils, and in every kind of topography, and with all kinds of farmers, and in every mode of using ploughs.

The committee regard the invention of Mr. Woodcock a new invention, and that it has its merits and advantages entitling it to be called useful.

With respect to the propriety of renewing and extending this patent, on the ground that the petitioner has not received an adequate reward or remuneration for his time, ingenuity, expense, labor, trouble, &c., bestowed upon it, and its introduction into use, the committee find themselves compelled to differ from the "board of extension," if their refusal to extend this patent was on that ground. Inventions of this character, it should be borne in mind, of all others, are the most difficult, however superior their usefulness, to get into general use in a short period of time. As before observed, with respect to the use of agricultural implements, the agricultural classes are generally less prone to change, or to be influenced by new fash-

ions, than any other class. The old habits, and practices, and implements, and modes of culture of their fathers, who taught them, are adhered to, because they become not merely used to, but attached to them, and they prefer them to innovations and uncertain experiments.

Many plain, and obvious, and highly useful, and economical improvements, in such implements, are viewed by a large portion of our intelligent agriculturists with prejudice, and are regarded as merely new-fangled contrivances to make money for those who sell them, and calculated to do more harm than good.

The difficulties attending the effecting the introduction into general use of this species of invention, so as to render it profitable to the inventor, should be considered in deciding the question of his receipt of adequate remuneration. In many instances it takes years of patient and assiduous toil to overcome the prejudice referred to, as they will rarely yield to anything but the test of experience. Again, the small profits which, if the inventor is fortunate in effecting its adoption, in any considerable portion of the country, he is of necessity limited to, upon each plough, to give it the recommendation of economy, must not be lost sight of. To effect all this, he must construct his ploughs at no small outlay of time, labor and expense; and he must generally vend them by travelling among the farmers, throughout the country, until their utility is tested, and they are sought for; and the trouble and expenses attending his collection of the small sums for each sales, it is believed, leave him but little for his "reward." Improvements in ploughs, though they have been very valuable to the country, within the last thirty years, it is believed, have generally yielded less profits to the inventors than many other inventions that have been of much less comparative utility; and it is considered by the committee that the principles upon which patents are extended apply more favorably to them than most of the inventions. There is less danger of detriment to the public from the extension of such patent, than of most others. As the great number and variety of such implements, not patented as well as patented, which the farmer can use, if a patentee is disposed to be extortionate towards the community, is a sure guarantee against such course by a patentee. To many inventions, such reasoning would not apply. It would not apply to those the use of which is limited in number, and the expense of the construction of which is great, and which the party using, on the extension of a patent, may lose by its extension, unless he submits to the exaction of the patentees.

The account or statement filed by petitioner, under oath, before the board, and also before the committee, it is conceived, is a striking illustration of the correctness of the views just stated. The petitioner states, on oath, that he has received $1200 for the sale of his rights for counties and townships, and by sales of his ploughs (say from 900 to 1200 ploughs) at $1 for patent advanced, charged on each, about $1200, making *his receipts* in all $2400. His patent cost him, he says, $85; his actual travelling expenses, in selling rights for districts, has been $392; and he estimates his time and

actual expenditures for patterns and experimental trials, for three years, *prior to his getting his patent*, at $666 per annum, or $2,000, making his expenditures $2,477, and exceeding his receipts $77. And this is without reference to the expenses of his unsuccessful application to the "board of extension" in 1845, or of his attendance three successive sessions of Congress to prefer his petition, or to his time, labor, &c., bestowed since 1832. The first patent he obtained is dated January 26, 1832, more than sixteen years ago. If, instead of this loss of $77, he had exhibited a clear profit of *five thousand dollars* for his sixteen years devoted to this invention, the committee *would not have* regarded it as a case of adequate remuneration and reward for his time, ingenuity, labor, expense, trouble, &c., and calling for a refusal of the application for a renewal and extension. It is owing to the kind of implement, and the difficulty of reaping from them remuneration corresponding to their usefulness and value, that he has encountered the losses he alleges, and it is not attributable to any fault or neglect on his part. On this ground, therefore, the committee regard his application for a renewal and extension of his patent as entitled to a favorable decision.

Notice of the application for an extension to the board was, of course, given as the law requires, and no one then opposed it; and during the three successive sessions the case has been before Congress, no one has petitioned against it. Two of the assignees of the patent, and other citizens, recommend its allowance in strong terms.

It will be observed that the petitioner has three other patents besides, that he prays may be renewed and extended, all for improvements of his plough. One expires 23d November, 1850; one 23d November, 1851, and the third the 31st January, 1859. They are all connected with each other.

In the bill that a majority of the committee have decided it is proper to report in favor of the petitioner, it is provided that his patent of 1832 shall be renewed and extended for seven years, from the passage of this act.

The difficulty of disconnecting these four patents, owned by petitioner, must be obvious; and, in fact, the existence, for several years, of the three last patents, renders this not strictly a case of ordinary renewal and extension, but as called for to enable the patentee to derive the full benefit of the last patents.